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SUBJECT: AMBASSADOR DISCUSSES ARTICLE 98 AGREEMENT WITH  
JORDANIAN UN REP

Classified By: Ambassador Edward W. Gnehm for Reasons 1.5 (B,D)

1. (C) SUMMARY: Ambassador met August 3 with Prince Zeid Bin Raad, Head of the Jordanian Delegation to the UN in New York, to discuss the status of a proposed Article 98 non-surrender agreement between the U.S. and Jordan. Zeid stated that the GOJ was "politically committed" to reaching such an agreement, but still had concerns regarding potential gaps in U.S. criminal jurisdiction over crimes covered by the Rome Statute and the issue of internally displaced people. Zeid also expressed his willingness to meet with U.S. officials in New York to continue negotiations. End summary.

2. (C) In response to a request by the Ambassador, Jordanian FM Muasher arranged a meeting between himself, the Ambassador and Prince Zeid on August 3 at the Foreign Ministry in Amman to take stock of ongoing Article 98 negotiations. Prince Zeid briefly reviewed his prior meeting in April 2003 with former Political-Military (PM) Senior Advisor Marisa Lino in New York, which he characterized as positive, and stated that he had been expecting a call from Washington to schedule another round of talks in May or June. While stating his opinion that "the ball is in the U.S. court," Prince Zeid also said that Jordan was committed to signing an Article 98 agreement and that he was ready to pursue further negotiations at any time.

3. (C) The Ambassador explained that Lino had recently left the State Department, but that she had reported that the GOJ intended to forward a list of questions about U.S. domestic law prior to another round of talks. When asked about the status of this list, Prince Zeid launched into an explanation of Jordan's concerns over gaps and/or inconsistencies between U.S. law and the Rome Statute. Specifically, he stated that certain crimes covered by Article 7 of the Rome Statute were not expressly illegal under U.S. law. Consequently, someone who had committed a crime as defined by the Rome Statute might not be subject to prosecution in the U.S. Prince Zeid further reiterated Jordan's concerns over the interpretation of Article 8(2)(b) of the Rome Statute relating to crimes associated with the transfer of civilians by an occupying power. He then asked if there was any movement to amend the U.S. penal code to eliminate jurisdictional gaps.

4. (C) The Ambassador explained that the GOJ should not wait for or expect a change to U.S. criminal law prior to concluding an Article 98 agreement, since this was a top priority for the U.S. government. He added, however, that there was a U.S. commitment to not let criminals escape justice, and that Washington was keenly aware of Jordan's concerns. When asked if he still wanted to present a formal list of questions, Prince Zeid responded that these questions could be presented and discussed in the context of another meeting in New York. The Ambassador concluded the discussion by promising that U.S. officials would approach the Jordanian UN Mission directly to schedule another round of negotiations.

5. (C) COMMENT: Prince Zeid professes to be prepared to work through his reservations on an Article 98 agreement and FM Muasher has made clear that this is Zeid's instruction from the King. We can thus expect him to approach seriously a follow-up meeting in New York. Given Prince Zeid's position as President of the Assembly of State Parties of the ICC, however, he is in no rush to conclude a non-surrender agreement and thus it is up to us to maintain the initiative and push forward negotiations. End comment.  
GNEHM